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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5831 of 2006
Date of decision: 29.11.2007

M/s Nagpal Yarn Trader **...Petitioner**

Versus

National Insurance Company Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sandeep Chhabra, Advocate for the petitioner.

Mr. Inderjit Sharma, Advocate for the respondents.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated October 27, 2006 passed by learned Additional Civil Judge (Senior Division), Panipat whereby application filed by the petitioner/plaintiff for a direction to the respondents/defendants to call for the report of Surveyor from their possession and permit the petitioner to produce the same by way of additional evidence, was dismissed.

The claim made in the suit is for declaration and mandatory injunction for declaring letter dated March 29, 2001 issued by respondent no. 3 as null and void and further directing the respondents to settle/decide the claim dated July 18, 2000 as per policy dated December 1, 1999. The policy was for securing goods in transit. The petitioner purchased certain goods on July 13, 2000. While those were in transit, the truck met with an accident on July 14, 2000 and as a result the goods were damaged. The intimation of the accident was duly given to the respondents, who deputed a Surveyor, namely, Shri Tarlok Singh Bhayana**,** for assessing the loss. The Surveyor allegedly submitted his report dated December 11, 2000 to the respondents. Thereafter, petitioner was intimated by the

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respondents company vide letter dated February 2, 2001 admitting the receipt of the report by the Surveyor and intimating the petitioner that in the absence of production of books of accounts by him for verifying the transaction, the verification could not be made and accordingly, petitioner was directed to produce the books of accounts and inspite of all these when the claim was not settled, the necessity to file the suit arose.

During the course of evidence, letter dated February 2, 2001 was duly exhibited as Ex. P7. When this letter was confronted to Shri N. R. Pruthi, DW 1, the Assistant Divisional Manager, Divisional Office, National Insurance Company, Panipat, he could not dispute the fact that intimation was duly sent to the petitioner vide letter Ex. P-7 regarding receipt of report from the Surveyor. He further submitted in his cross-examination when confronted with the letter Ex. P-7 that he had not brought the report of the Surveyor on that date. When recalled for cross-examination, DW 1 stated that the main file has been misplaced from the office, however, neither any report of same was lodged with the police nor with the higher authorities. As the main file is not available, report of the Surveyor could not be produced. It is noticed by the Court that photocopy of the report of Surveyor was received by the Court in an envelop sent by the Insurance Company addressed to the Court. This was noticed when the evidence of the petitioner was already over. Photocopy of the report bears signature of Surveyor Shri Tarlok Singh Bhayana, who unfortunately is reported to have expired now. Once a photo copy of the report has come in possession of the Court, may or may not have been sent by the Insurance Company still the stand of the petitioner was vindicated to the effect that the Surveyor had infact submitted his report as he was also informed vide letter Ex. P-7. Merely because the Insurance Company has lost his file, petitioner cannot be deprived of his due rights.

Accordingly, I find it is a just case to permit the petitioner to lead additional evidence in the form of report of the Surveyor Shri Tarlok Singh Bhayana.

As the fact of receipt of report of Surveyor in the present case is already established, a request was made by the counsel for the petitioner

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that when the existence of report is prima facie proved and the loss thereof is even admitted by the respondents company, case for permitting the petitioner to lead secondary evidence to prove the report is also made out and relief for permission to the petitioner to prove the report of Surveyor by leading secondary evidence may also be granted.

The prayer made seems to be justified in the peculiar facts and circumstances of the case. As prima facie, ingredients required for production of documents in secondary evidence are available, I deem it appropriate to grant even this prayer of the petitioner and permit him to prove the report of Surveyor by leading secondary evidence. However, it is made clear that value of the report and contents thereof shall be considered by the Court below in accordance with law.

The impugned order passed by the trial Court is set aside.

The revision petition is disposed of in the manner indicated above. The parties through their counsel are directed to appear before the trial Court for further proceedings on December 21, 2007.

November 29, 2007 **(Rajesh Bindal)**
Pka **Judge**